

RECEIVED
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
2001 AUG -7 P 4:46 SOUTHERN DIVISION

FILED

AUG 7 2001

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MONTGOMERY, ALA.
ESTATE OF LEE J. McMULLAN,

Petitioner,

v.

CHARLES O. ROSSOTTI, in his capacity
as Commissioner of the Internal Revenue
Service, and INTERNAL REVENUE
SERVICE.

Respondents.

CLERK
U. S. DISTRICT COURT
MIDDLE DIST. OF ALA.
MONTGOMERY, ALA.

CASE NO. 01-W-975-S

PETITION TO ENFORCE FOIA REQUEST

COMES NOW Petitioner, the Estate of Lee J. McMullan, by and through counsel, and hereby petitions this Honorable Court to enforce its Request under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, submitted to Charles O. Rossotti, as Commissioner of the Internal Revenue Service, and the Internal Revenue Service (hereinafter collectively referred to as "IRS") and as grounds therefor states:

Parties, Jurisdiction, and Venue

1. Prior to her demise, Mrs. Lee J. McMullan resided in Houston County, Alabama and her will was probated in Houston County, Alabama. Donald F. McMullan is Executor of the Estate of Lee J. McMullan as Letters of Testamentary were granted to him by the Probate Court of Houston County on January 21, 1997.

2. The IRS has failed or refused to respond to Petitioner's FOIA Request (as hereinafter defined) within the applicable time limitations of 5 U.S.C. § 552(a)(6); therefore, Petitioner is

deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

3. Accordingly, this Court has jurisdiction over this matter and venue is proper.

Facts

4. In a letter dated February 20, 2001 to the IRS, Petitioner, by and through counsel, requested copies of certain materials from the IRS pursuant to FOIA, 5 U.S.C. § 552, the Privacy Act of 1974, 26 U.S.C. § 6103, and all regulations underlying those two acts (hereinafter referred to as “Petitioner’s FOIA Request”). A copy of Petitioner’s FOIA Request is attached hereto as **Exhibit “A”** and a copy of IRS Form 2848 designating counsel is attached hereto as **Exhibit “B”**. The IRS acknowledged receipt Petitioner’s FOIA Request on February 28, 2001. *See* IRS letter dated June 18, 2001, a copy of which is attached hereto as **Exhibit “D”**.

5. In a letter dated March 28, 2001, the IRS responded to Petitioner’s request stating that it “must ask for additional time to locate and consider releasing the Internal Revenue Service records covered in your Freedom of Information Act (FOIA) request” and requested that Petitioner agree to extend the time period for the IRS to respond to June 25, 2001. A copy of IRS letter dated March 28, 2001 is attached hereto as **Exhibit “C”**.

6. In the spirit of cooperation, Petitioner agreed to said extension.

7. In a letter dated June 18, 2001, the IRS again requested additional time to respond to Petitioner’s FOIA Request extending the deadline to September 28, 2001. As grounds for said extension, the IRS alleged that they “have ordered and are waiting to receive the requested records” and that “the information you [Petitioner] are requesting has recently been sent to District Counsel in Alabama. As soon as case is assigned to an attorney, we [IRS] will be contacted to process the Freedom of Information Act (FOIA) request.” A copy of IRS letter dated June 18, 2001 is attached

hereto as **Exhibit “D”**.

8. On or about May 14, 2001, Petitioner filed its Petition with the United States Tax Court requesting a redetermination of its tax liability as set forth in the Notice of Deficiency dated February 16, 2001 issued by the IRS Commissioner.

Legal and Argument Authority

9. 5 U.S.C. §552 (a)(6)(A)(i) requires that an agency responding to a FOIA request “must determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and reasons therefor.”

10. This 20 day deadline is extended for up to 10 additional working days in “unusual circumstances” provided the IRS notifies the requesting party in writing and sets forth the unusual circumstances for such extension. 5 U.S.C. §552 (a)(6)(B)(i).

11. According to 5 U.S.C. §552 (a)(6)(B)(iii), “‘unusual circumstances’ means, *but only to the extent reasonably necessary to the proper processing of the particular requests –*

- (I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
- (II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
- (III) the need for consultation, *which shall be conducted with all practicable speed*, with another agency having a substantial interest in the determination

of the request or among two or more components of the agency having substantial subject-matter interest therein.” 5 U.S.C. §552

(a)(6)(B)(iii)(emphasis added).

12. The 10 day extension for IRS response can be extended to a later time provided that the IRS notify, in writing, the party requesting the information that the request cannot be processed with the applicable time period, the date that such information will be provided, and the opportunity to narrow scope of the request so that the information can be produced within the applicable time period. 5 U.S.C. §552 (a)(6)(B)(ii).

13. The first written notice given by the IRS to Petitioner is dated March 28, 2001. That response does not set forth any “unusual circumstances” as required by 5 U.S.C. §552 (a)(6)(B)(i). Rather, the IRS merely responded that it “must ask for additional time to locate and consider releasing the Internal Revenue Service records covered in your Freedom of Information Act (FOIA) Request.” Petitioner asserts that at the time of the IRS’s March 28, 2001 response, no unusual circumstances existed.

14. The IRS’s March 28, 2001 response also notified Petitioner that “you may wish to consider limiting the scope of your request so that we can process it more quickly”; yet, the IRS did not give Petitioner any reference as to what portion of the request might be narrowed to hasten the IRS’s response. Despite the fact that no unusual circumstances for the delay were proffered by the IRS and that the IRS did not request or specifically recommend that the scope of Petitioner’s request be narrowed, Petitioner nonetheless agreed to the extension in the spirit of cooperation and in an abundance of caution so as to guard against any future claim by the IRS that Petitioner was uncooperative and/or that “exceptional circumstances” prevented timely compliance.

15. After the filing on Petitioner's Petition with the United States Tax Court on May 14, 2001, the IRS informed Petitioner in a letter dated June 18, 2001 that it would not produce the requested information until September 28, 2001, approximately seven months from the date of Petitioner's FOIA Request. As grounds for this additional extension, the IRS alleges that they "have ordered and are waiting to receive the requested records" and "the information you [Petitioner] are requesting has recently been sent to District Counsel in Alabama. As soon as a case is assigned to an attorney, we [IRS] will be contacted to process the Freedom of Information Act ('FOIA') Request." Logically, Petitioner did not file its Petition in the U.S. Tax Court until May 14, 2001; therefore the grounds raised in the IRS letter dated June 18, 2001 did not exist at the time of Petitioner's FOIA Request, which was received by the IRS on February 28, 2001. The fact that these grounds did not exist at the time of the IRS's receipt of Petitioner's FOIA Request is reinforced by the IRS's failure to assert such grounds in its initial response dated March 28, 2001. The IRS, through its extension of its response deadlines, is now attempting to knowingly and intentionally limit the information available to Petitioner in violation of the letter and spirit of FOIA. Petitioner asserts that had such information been timely delivered by the IRS in accordance with the applicable time periods and requirements set forth in 5 U.S.C. §552 (a)(6), all information sought by Petitioner would have likely been available and would not now be in the office of "District Counsel in Alabama," as the IRS contends.

16. Petitioner also asserts that the IRS's stated grounds for an additional extension do not qualify as "unusual circumstances" under 5 U.S.C. §552 (a)(6)(B)(iii), because the definition of that term in itself qualifies such circumstances as "only to the extent reasonably necessary to the proper processing of the particular requests." *See* 5 U.S.C. §552 (a)(6)(B)(iii). Petitioner asserts that for

the IRS to have only recently ordered the records originally requested in February 2001 and to have just sent the information and documents to District Counsel as of June 18, 2001 certainly is not “to the extent reasonably necessary to the proper processing” of Petitioner’s FOIA Request. Notably, the IRS did not and has ever given any indication that the requested records have been difficult or time consuming to locate or voluminous. Additionally, the “unusual circumstances” definition of the statute clearly provides that consultation with counsel is to “be conducted with all practicable speed.” *See* 5 U.S.C. §552 (a)(6)(B)(iii)(III). Petitioner asserts that the IRS, as of June 18, 2001, had almost four months to consult with counsel concerning this FOIA Request. Without doubt, the IRS’s failure to consult with counsel before June 18, 2001 does not constitute “with all practicable speed.” As such, consultation with counsel is not an “unusual circumstance” sufficient to excuse the IRS from complying with the FOIA statutory deadlines.

Request for Declaratory and Injunctive Relief

17. Petitioner adopts and re-asserts the allegations contained in paragraphs 1 through 16 as if fully set out herein.

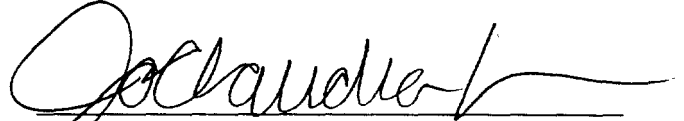
18. Petitioner asserts that it is entitled to declaratory and injunctive relief, as well as reasonable attorneys’ fees and court costs, to enforce IRS compliance with its FOIA Request.

WHEREFORE, based upon the forgoing, Petitioner respectfully requests this Court take the following action:

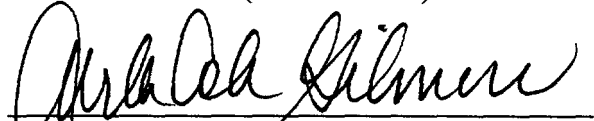
- a. to declare that the IRS has acted in contradiction of the Freedom of Information Act, 5 U.S.C. § 552;
- b. to order that the IRS immediately produce all documents, in their entirety, requested in Petitioner’s FOIA Request;

- c. to award Petitioner reasonable attorneys' fees and court costs pursuant to 5 U.S.C. § 552; and
- d. to order such further and immediate relief which the Court may deem appropriate.

Respectfully submitted this 7th day of August, 2001.



Jo Claudia Moore (258-29-2536)



Carla Cole Gilmore (417-92-1163)

Attorneys for Petitioner

OF COUNSEL

KAUFMAN & ROTHFEDER, P.C.
2740 Zelda Road, Third Floor
(P.O. Drawer 4540 - 36103-4540)
Montgomery, Alabama 36106
Telephone: (334) 244-1111
Facsimile: (334) 244-1969

LAW OFFICES
KAUFMAN & ROTHFEDER
A PROFESSIONAL CORPORATION

SAMUEL KAUFMAN
ALAN E. ROTHFEDER
JO KAREN PARR
THOMAS R. DERRAY
RICHARDSON B. MCKENZIE III
ROBERT E. L. GILPIN
GEORGE W. THOMAS
JOHN WARD WEISS
ROBERT M. RITCHIEY
SIMON F. FENTON
WILLIAM B. SELLERS

ALLIANT CENTER
2740 ZELDA ROAD
MONTGOMERY, ALABAMA 36106

MAILING ADDRESS:
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ZIP 36103-4540

TELEPHONE (334) 244-1111
FACSIMILE (334) 244-1969

J. SCOTT PIERCE
CARLA COLE GILMORE
MARK M. GIBSON
DAVID BOWEN HUGHES
JOCLAUDIA MOORE
ERIC LLOYD FRUITT
JOHN A. HOWARD

OF COUNSEL
GREGG BRANTLEY EVERETT
ALSO ADMITTED TO: "D.C. BAR" "GA BAR"

February 20, 2001

Via Certified Mail -Return Receipt Requested

Receipt No. 7099 3220 0002 9990 4078

Internal Revenue Service
District Director, Gulf Coast District
FOIA Request
Attention: Disclosure Officer
600 South Maestri Place
New Orleans, LA 70130

Re: Estate of Lee J. McMullan
Donald F. McMullan, Executor
SSN: 418-80-3801

Ladies and Gentlemen:

Pursuant to the Freedom of Information Act, 5 U.S.C. §552, the Privacy Act of 1974, 26 U.S.C. §6103, and all regulations underlying those two acts, we hereby request copies of the materials described in the list attached hereto as Exhibit A.

The Internal Revenue Service is authorized to charge us for searching for the records, for reviewing the records and making deletions from them, and for making the requested copies. The Internal Revenue Service may incur up to \$200.00 in charges without further authorization. If the total charges are estimated to exceed that amount, please provide us with an estimate of the charges and seek further authorization from us.

If it is determined that any requested record or portion thereof will not be disclosed, please provide us with the nonexempt records and with the nonexempt portions of the remaining records. If any requested record or portion thereof is not disclosed, please also provide us with an index and a detailed description of each record or portion thereof not disclosed and a statement describing the statutory basis for not disclosing each record or portion thereof.

Exhibit A

KAUFMAN & ROTHFEDER

Internal Revenue Service
FOIA Request
February 19, 2001
Page 2

Our name, address and telephone number are as follows:

Alan E. Rothfeder
Kaufman & Rothfeder, P.C.
P.O. Drawer 4540
Montgomery, AL 36103-4540

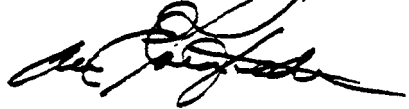
(334) 244-1111

Form 2848, Power of Attorney and Declaration of Representative, executed in our favor by Donald F. McMullan, as executor, and a notarized verification of authorization and identity are also attached as required by the regulations.

Please address the requested material to us at the address set forth above. If you have any questions concerning this request, please contact us by telephone at the number set forth above.

Sincerely yours,

KAUFMAN & ROTHFEDER, P.C.

A handwritten signature in black ink, appearing to read 'Alan E. Rothfeder', with a stylized flourish at the end.

Alan E. Rothfeder

AER:pb
Enclosures
cc: Mr. Don McMullan

EXHIBIT A

REQUEST FOR FILES

1. Any and all Forms 706, Estate (and Generation-Skipping Transfer) Tax Returns, or information returns or elections filed with respect to Lee J. McMullan, deceased November 27, 1996.
2. Any and all administrative files related to the review and/or examination of the Form 706, Estate Tax (and Generation-Skipping Transfer) Tax Return of the Estate of Lee J. McMullan deceased November 27, 1996, including, without limitation, any and all revenue agent's reports, transmittal letters, advisory opinions, notes, telephone call slips, electronic mail transmissions, interviews, documents describing or recording interviews, work papers, field service advice (FSA) memoranda, Chief Counsel Advice, protests, memoranda, correspondence, documents, computations, summaries, discussions, agreements regarding disposition, other materials prepared or accumulated relative to the examination, and drafts of any and all of the above.
3. Any files relative to the review and/or examination of the Form 706, Estate Tax (and Generation-Skipping Transfer) Tax Return of the Estate of Lee J. McMullan, deceased November 27, 1996, which are not otherwise included in the administrative file related to the review and/or examination. This request encompasses files retained by the examining agent, engineers or other specialists who may have been assigned to the case, including without limitation, desk files, group files, specialty case files, work papers, notes, documents, memoranda, correspondence, transmittal letters, documents describing or recording interviews, telephone call slips, electronic mail transmissions, other materials prepared or accumulated relative to the examination, and drafts of any and all of the above.
4. Any files relative to the review and/or examination of the Form 706, Estate Tax (and Generation-Skipping Transfer) Tax Return of the Estate of Lee J. McMullan, deceased November 27, 1996, which may have been prepared by independent consultants (including engineers and other independent specialists), which are not otherwise included in the administrative file related to the review and/or examination. This request encompasses files, including without limitation, work papers, notes, documents, memoranda, correspondence, transmittal letters, interviews, documents describing or recording interviews, telephone call slips, electronic mail transmissions, other materials prepared or accumulated relative to the examination, and drafts of any and all of the above.
5. Any files relative to the review and/or examination of the Form 706, Estate Tax (and Generation-Skipping Transfer) Tax Return of the Estate of Lee J. McMullan, deceased November 27, 1996, that include information and documents obtained pursuant to summonses issued to third parties which are not otherwise included in the administrative file related to the review and/or examination.
6. A list of all information relative to the review and/or examination of the Estate Tax (and Generation-Skipping Transfer) Tax Return of the Estate of Lee J. McMullan, deceased November 27, 1996, which is maintained electronically. This list should identify the information by subject matter and format (i.e., tape, disk, etc.).

Form **2848**

(Rev. December 1997)

Department of the Treasury
Internal Revenue Service**Power of Attorney
and Declaration of Representative**

▶ See the separate instructions.

OMB No. 1545-0150

For IRS Use Only

Received by: _____

Name _____

Telephone _____

Function _____

Date _____

Part I Power of Attorney (Please type or print.)**1 Taxpayer information** (Taxpayer(s) must sign and date this form on page 2, line 9.)

Taxpayer name(s) and address

Estate of Lee J. McMullan

Social security number(s)

418-80-3801

Employer identification number

C/O Donald F. McMullan, Executor

P. O. Box 6405

Daytime telephone number

Plan number (if applicable)

Dothan, AL 36302

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) (Representative(s) must sign and date this form on page 2, Part II.)

Name and address

Alan E. Rothfeder

CAF No. _____

Telephone No. (334) 244-1111

Kaufman & Rothfeder, P.C.

Fax No. (334) 244-1969

P. O. Drawer 4540, Montgomery, AL 36103

Check if new: Address ☐Telephone No. ☐

Name and address

CAF No. _____

Telephone No. _____

Fax No. _____

Check if new: Address ☐Telephone No. ☐

Name and address

CAF No. _____

Telephone No. _____

Fax No. _____

Check if new: Address ☐Telephone No. ☐

I represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s)
Estate Tax	706	11-27-96
Gift Tax	709	1993 through 1996

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. (See instruction for Line 4 — Specific uses not recorded on CAF.) ☐**5 Acts authorized.** The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative unless specifically added below, or the power to sign certain returns (see instruction for Line 5 — Acts authorized).

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: _____

Note: In general, an unenrolled preparer of tax returns cannot sign any document for a taxpayer. See Revenue Procedure 81-38, printed as Pub. 470, for more information.**Note:** The tax matters partner of a partnership is not permitted to authorize representatives to perform certain acts. See the instructions for more information.**6 Receipt of refund checks.** If you want to authorize a representative named on line 2 to receive, BUT NOT TO ENDORSE OR CASH, refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s) ▶ _____

For Paperwork Reduction and Privacy Act Notice, see the separate instructions.

Form **2848** (Rev. 12-97)

- 7 Notices and communications.** Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2 unless you check one or more of the boxes below.
- a If you want the first representative listed on line 2 to receive the original, and yourself a copy, of such notices or communications, check this box ☐
- b If you also want the second representative listed to receive a copy of such notices and communications, check this box ☐
- c If you do not want any notices or communications sent to your representative(s), check this box ☐
- 8 Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here ☐
YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.
- 9 Signature of taxpayer(s).** If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.
- IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.

Donald F. McMullan
 Signature

9-16-98
 Date

Executor
 Title (if applicable)

Donald F. McMullan
 Print Name

Signature

Date

Title (if applicable)

Print Name

Part II Declaration of Representative

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney — a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant — duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent — enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d Officer — a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee — a full-time employee of the taxpayer.
 - f Family Member — a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g Enrolled Actuary — enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d)(1) of Treasury Department Circular No. 230).
 - h Unenrolled Return Preparer — an unenrolled return preparer under section 10.7(c)(viii) of Treasury Department Circular No. 230.

► IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.

Designation — Insert above letter (a - h)	Jurisdiction (state) or Enrollment Card No.	Signature	Date
a	Alabama	<u>an [Signature]</u>	<u>9/16/98</u>

7. Any Appeals Case Files, including, without limitation, any and all appellate conferee reports, closing actions, supporting statements, advisory opinions, notes, interviews, work papers, memoranda, correspondence, computations, summaries, discussions, agreements regarding disposition, other documents and drafts of these materials addressing the gift tax liabilities of Lee J. McMullan for the taxable years ending December 31, 1993, 1994, and 1995.

8. Any Chief Counsel Tax Litigation Case Files, including, without limitation, any and all advisory opinions, memoranda, briefs, pleadings, notes, interviews, correspondence, computations, summaries, discussions, agreements regarding disposition, other documents and drafts of these materials relating in any manner to the gift tax liabilities of Lee J. McMullan for the taxable years ending December 31, 1993, 1994, and 1995. Please exclude those portions of these materials which relate exclusively to non-recurring issues presently pending before the Court and those portions which consist exclusively of non-factual attorney work product with respect to active litigation.


STATE OF ALABAMA)
 :
MONTGOMERY COUNTY)

VERIFICATION AND IDENTIFICATION

I, the undersigned, Alan E. Rothfeder, having requested certain records from the Internal Revenue Service on behalf of the Estate of Lee J. McMullan, Donald F. McMullan, Executor, pursuant to the Freedom of Information Act and the Privacy Act of 1974, hereby verify that

1. I am an attorney duly licensed to practice law in the State of Alabama.
2. I am a member of the law firm of Kaufman & Rothfeder, P.C., Montgomery, Alabama
3. Donald F. McMullan, as Executor, has executed a power of attorney that accompanies the Freedom of Information and Privacy Act request to which this verification relates, authorizing me to receive the documents and information requested from the Internal Revenue Service
4. A true and correct photocopy of my State of Alabama drivers license bearing my photograph and signature is attached hereto as Exhibit A for the purposes of identification.

Dated this the 20 day of February, 2001.

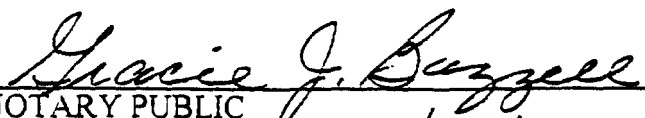


Alan E. Rothfeder

STATE OF ALABAMA)
 :
MONTGOMERY COUNTY)

I, Gracie J. Buzzell a Notary Public in and for said State and County, hereby certify that Alan E. Rothfeder, whose name is signed to the foregoing Verification and Identification, and who is known personally to me, acknowledged before me on this day that, being informed of the contents of this document, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand this 20th day of Feb., 2001.



NOTARY PUBLIC
My Commission Expires: 12/16/02

SEAL

Alabama Driver License

ISS: 01-11-1993
EXP: 01-11-2003

NO: 2569342 Director of Public Safety
Michael B. Sullivan

ALAN ROTUNFEDER
1601 CROOM DRIVE
MONTGOMERY AL 36106

CLASS: ENDORSEMENT: RESTRICTIONS:
DM 5:0 8 SSN: A
EXP: 11-01-1998 WI 146-28-1680
SEX: M EYES: BRN
HT: 6-06 WT: 150 BLU: BRN

Organ Donor

[Signature]

Form **2848**
(Rev. December 1997)**Power of Attorney
and Declaration of Representative**

OMB No. 1545-0150

For IRS Use Only

Department of the Treasury
Internal Revenue Service

▶ See the separate instructions.

Received by:

Name _____

Telephone _____

Function _____

Date _____

Part I Power of Attorney (Please type or print.)**1** Taxpayer information (Taxpayer(s) must sign and date this form on page 2, line 9.)

Taxpayer name(s) and address

Estate of Lee J. McMullan

Social security number(s)

418-80-3801

Employer identification number

C/O Donald F. McMullan, Executor

P. O. Box 6405

Daytime telephone number

Plan number (if applicable)

Dothan, AL 36302

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) (Representative(s) must sign and date this form on page 2, Part II.)

Name and address

Alan E. Rothfeder

CAF No. _____

Telephone No. (334) 244-1111

Kaufman & Rothfeder, P.C.

Fax No. (334) 244-1969

P. O. Drawer 4540, Montgomery, AL 36103

Check if new: Address ☐Telephone No. ☐

Name and address

CAF No. _____

Telephone No. _____

Fax No. _____

Check if new: Address ☐Telephone No. ☐

Name and address

CAF No. _____

Telephone No. _____

Fax No. _____

Check if new: Address ☐Telephone No. ☐

I represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

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Type of Tax (Income, Employment, Excise, etc.)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s)
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Gift Tax	709	1993 through 1996

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List any specific additions or deletions to the acts otherwise authorized in this power of attorney: _____

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Name of representative to receive refund check(s) ▶ _____

For Paperwork Reduction and Privacy Act Notice, see the separate instructions.

Form 2848 (Rev. 12-97)

7 Notices and communications. Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2 unless you check one or more of the boxes below.

- a If you want the first representative listed on line 2 to receive the original, and yourself a copy, of such notices or communications, check this box ☐
- b If you also want the second representative listed to receive a copy of such notices and communications, check this box ☐
- c If you do not want any notices or communications sent to your representative(s), check this box ☐

8 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here ☐
YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.

9 Signature of taxpayer(s). If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.

► IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.

Donald F. McMullan

Signature

9-16-98

Date

Executor

Title (if applicable)

Donald F. McMullan

Print Name

Signature

Date

Title (if applicable)

Print Name

Part II Declaration of Representative

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney — a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant — duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent — enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d Officer — a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee — a full-time employee of the taxpayer.
 - f Family Member — a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g Enrolled Actuary — enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d)(1) of Treasury Department Circular No. 230).
 - h Unenrolled Return Preparer — an unenrolled return preparer under section 10.7(c)(viii) of Treasury Department Circular No. 230.

► IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.

Designation — Insert above letter (a - h)	Junsdiction (state) or Enrollment Card No.	Signature	Date
a	Alabama	<u>an P. [Signature]</u>	<u>9/16/98</u>

Internal Revenue Service

Department of the Treasury

District
Director

600 South Maestri Place, New Orleans, LA 70130

Allan E. Rothfeder
Kaufman & Rothfeder, P.C.
P. O. Drawer 4540
Montgomery, AL 36103-4540

Person to Contact:

Sr. Disclosure Specialist
Ann Rempel
Identification No.: 72-18044

Telephone Number:

(504) 558-3379

Refer Reply to:

72 F 2001-00355

Date: MAY 25 2001

Re: Estate of Lee J. McMullan

Dear Mr. Rothfeder:

We must ask for additional time to locate and consider releasing the Internal Revenue Service records covered in your Freedom of Information Act (FOIA) request dated January 5, 2001 and received in our office on January 5, 2001. We will try to respond by **June 25, 2001**. We are sorry for any inconvenience the delay may cause.

IF YOU AGREE TO THIS VOLUNTARY EXTENSION

If you agree to this extension of time, no reply to this letter is necessary. You will still have the right to appeal if we subsequently deny your request. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the person whose name and telephone number are shown above.

IF YOU DO NOT AGREE TO THIS VOLUNTARY EXTENSION

If you do not agree to this extension and do not want to modify the scope of your request, you may file suit. See 5 U. S. C. 552(a)(6)(C)(i). You may not appeal this letter. See revised FOIA regulations, at 31 C. F. R. 1.5(j) and 65 FEDERAL REGISTER 40503-40516 (June 30, 2000).

To file suit you must petition the U.S. District Court in the district in which you live or work, or where the records are located, or in the District of Columbia, to obtain a response to your request. Your petition will be treated according to the Federal Rules of Civil Procedure which apply to actions against any agency of the United States. These procedures require that the IRS be notified of the pending suit, through service of process, which should be directed to:

Commissioner of Internal Revenue
Attention: CC:PA:DPL
1111 Constitution Avenue
Washington, D.C. 20224

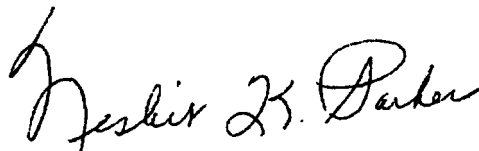
-2-

If the court concludes you have unreasonably refused to limit your request or to accept the alternate timeframe for response, it may find that our failure to meet the statutory time frames in the FOIA is justified. See 5 U. S. C. 552(a)(6)(C)(iii).

We hope you will agree to allow us more time to process your request. If you wish to contact us, please call the person whose name and telephone number are shown above.

We will try to make our determination and provide the appropriate responsive information to you by **June 25, 2001**.

Sincerely yours,

A handwritten signature in cursive script, reading "Nesbit K. Parker". The signature is written in dark ink and is positioned above the printed name and title.

Nesbit K. Parker
Disclosure Officer, New Orleans
Governmental Liaison and Disclosure



**DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224**

•Mr. Allan E. Rothfeder
Kaufman & Rothfeder, P.C.
P. O. Drawer 4540
Montgomery, AL 36103-4540

Person to Contact:

Sr. Disclosure Specialist Ann Rempel
Identification No.: 72-18044

Telephone Number:

(504) 558-3379

Refer Reply to:

72 F 2001-00355

Date:

JUN 18 2001

Re: Estate of Lee J. McMullan

Dear Mr. Rothfeder:

This letter is in response to your Freedom of Information Act (FOIA) request dated February 20, 2001 and received in our office on February 28, 2001. We are sorry, but we must ask for additional time to process your request for information. Currently, we

{ } are trying to locate the requested records.

{XX} have ordered and are waiting to receive the requested records.

{ } have received the requested documents and are now numbering and photocopying them.

{ } are reviewing the requested records prior to our releasing them.

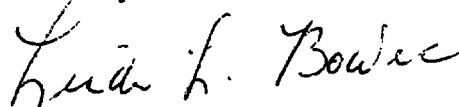
{XX} Other: The information you are requesting has recently been sent to District Counsel in Alabama. As soon as case is assigned to an attorney, we will be contacted to process the Freedom of Information Act (FOIA) request. .

We plan to provide you with a response by September 28, 2001. Thank you for your patience in this matter.

Notice 393, which explains your appeal rights, is enclosed.

Should you have any questions, please contact Disclosure Specialist Ann Rempel at the telephone number listed above.

Sincerely

A handwritten signature in cursive script, appearing to read "Linda L. Bowser".

Nesbit K. Parker

Disclosure Officer, New Orleans

Governmental Liaison & Disclosure

Handwritten initials "nr" in a cursive script.

Enclosure:
Notice 393

**Information on an IRS Determination to Withhold Records Exempt From
The Freedom Of Information Act - 5 U.S.C. 552**

Appeal Rights

You may file an appeal with the Internal Revenue Service within 35 days after we (1) determine to withhold records, (2) determine that no records exist, or (3) deny a fee waiver or a favorable fee category. If some records are released at a later date, you may file within 35 days after the date the last records were released.

The appeal must be in writing, must be signed by you, and must contain the following information:

Your name and address
description of the requested records
date of the request (and a copy, if possible)
date of the letter denying the request (and a copy, if possible)

Mail your appeal to:

INTERNAL REVENUE SERVICE
RICHMOND APPEALS OFFICE-FOIA APPEAL
2727 ENTERPRISE PARKWAY, SUITE 100
RICHMOND, VA 23229

Judicial Review

If we deny your appeal, or if we do not send you a reply within 20 days (not counting Saturdays, Sundays, or legal public holidays) after the date we received the appeal, you may file a complaint with the U.S. District Court in the district where (1) you reside, (2) your principal place of business is located, or (3) the records are located. You may also file in the District Court for the District of Columbia.

The court will treat your complaint according to the Federal Rules of Civil Procedure (F.R.C.P.). Service of process is governed by Rule 4(d)(4) and (5), which requires that a copy of the summons and complaint be (1) personally served on the United States Attorney for the district in which the lawsuit is brought; (2) sent by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and (3) sent by registered or certified mail to the Commissioner of Internal Revenue, Attn: CC:EL:D, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

In such a court case, the burden is on the Internal Revenue Service to justify withholding the requested records, determining that no records exist, or denying a fee waiver or a favorable fee category. The court may assess against the United States reasonable attorney fees and other litigation costs incurred by the person who takes the case to court and who substantially prevails. You will have substantially prevailed if the court determines, among other factors, that you had to file the lawsuit to obtain the records you requested and that the Internal Revenue Service had no reasonable grounds to withhold the records. See Internal Revenue Service Regulations 26 CFR 601.702 for further details.

Exemptions

The Freedom of Information Act, 5 U.S.C. 552, does not apply to matters that are —

(b)(1) • (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and

(B) are in fact properly classified under such an Executive Order;

- (b)(2) • related solely to the internal personnel rules and practices of an agency;
- (b)(3) • specifically exempt from disclosure by statute (other than section 552b of this title), provided that the statute
 - (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
 - (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

Note: subsection (b)(3) protects information exempted by certain qualifying statutes, such as Internal Revenue Code section 6103, which protects tax returns and information generated by and collected by the IRS with regard to a taxpayer.
- (b)(4) • trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) • inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) • personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) • records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information
 - (A) could reasonably be expected to interfere with enforcement proceedings,
 - (B) would deprive a person of a right to a fair trial or an impartial adjudication,
 - (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,
 - (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or
 - (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) • contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) • geological and geophysical information and data, including maps, concerning wells.